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UNITED NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 726

Case No. 812: HAMZA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 22 September 1994, Ahmed Ahmed Hamza, a former staff member of the United Nations Economic and Social Commission for Western Asia, hereinafter referred to as ESCWA, filed an application requesting the Tribunal to order, inter alia:

"(a) Compensation of a total two years salary of US$ 127,514.400[sic] - based on the last net salary received for the month of December 1993 (...) - for the damage sustained by the Respondent['s] decision [to terminate his appointment], and the hardships incurred to Appellant's professional credibility and personal life.

...

(b) ... [if it finds] it justifiable to investigate the real reasons behind the hasty decision to terminate Appellant's appointment and promptly appoint a favourable candidate by the Executive Secretary in total defiance of the rules. ..."

Whereas the Respondent filed his answer on 16 December 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of ESCWA on 8 April 1984, as Chief, Environmental Co-ordination Unit, UNEP/ESCWA, at the P-5, step I level, on a one year fixed-term appointment, which was renewed for further fixed-terms, through 31 December 1987. On 3 February 1992, the Applicant re-entered the service of ESCWA on a one year fixed-term project personnel appointment as Senior Regional Adviser on Environment, at the L-5, step V level. His appointment was extended several times, through 31 December 1993, when he separated from service.

In a memorandum dated 16 November 1992, the Chief, Personnel Section, informed the Applicant, "the Executive Secretary has approved the extension of your fixed-term appointment for the remaining duration of 1993, i.e. from 3 February to 31 December 1993." He requested his written acceptance of the offer so that ESCWA could proceed with "the usual extension formalities," including the solicitation of his government's agreement to secondment.

In February 1993, a new Executive Director of ESCWA was appointed. In a memorandum dated 24 May 1993, the Executive Director informed the Applicant, "your fixed-term appointment, currently being maintained on a monthly basis, will be extended through 30 June 1993. This appointment cannot, unfortunately, be extended beyond this date."

On 29 June 1993, the Officer-in-Charge (OIC), ESCWA, authorized a further one-month extension of the Applicant's appointment, through 31 July 1993, to enable him to undertake a mission to Lebanon. In a memorandum to the OIC, dated 30 June 1993, the Applicant refused the proposed extension, noting that it "did not clarify in any way my contractual status with ESCWA after 31 July 1993 and through 31 December 1993 ..." He requested

reconsideration of "the decision regarding the termination of my contract ... and ... suspension of that decision ..." On 30 June 1993, the Applicant departed for Egypt.

On 5 July 1993, the Applicant wrote to the Secretary-General, requesting an administrative review of the decision to terminate his fixed-term appointment. On 28 July 1993, a Review Committee, which had been established by the OIC on 29 June 1993 to review the Applicant's case and several others, recommended that the Executive Secretary, "take into account the expectation of the advisors and the assessment of the chiefs of divisions in the exercise of his prerogative in reconsidering these cases."

On 4 August 1993, the OIC, Division of Administration, informed the Applicant that "the Executive Secretary has approved the recommendation of the Review Committee" to retain his services through 31 December 1993. He requested the Applicant to report for duty no later than 8 August 1993 and to sign three letters of appointment, one for the period 3 February to 30 June 1993, one for the month of July 1993, and the third from 1 August to 31 December 1993. The Applicant initially refused to sign these letters of appointment, but subsequently did so, stating that his agreement to continue service with ESCWA should not be interpreted as an agreement to withdraw his claim against the Organization for the harm done to him.

On 20 September 1993, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 28 November 1993, the Chief, Division of Administration, informed the Applicant that his appointment would "be allowed to expire". On 31 December 1993, the Applicant separated from service.

The JAB adopted its report on 28 April 1994. Its considerations and recommendations read, inter alia:

"Considerations

...

14. The Panel could not agree with the contentions of Respondent, ... In its understanding, Appellant had suffered real harm. He may well have incurred expenses in returning to Alexandria; he was certainly - at the least - inconvenienced when his salary payments were suspended. He endured a two-month period of uncertainty. Whether or not this was the cause of his hypertension and 'depressive illness' (cf. Medical Report, ...) the symptoms would have been aggravated during this period of limbo. In short, the Panel found that '... Respondent has been negligent as an employer in failing to extend to [Appellant] fair and just treatment ...' (UNAT Judgement No. 305, Jabbour, para. VI).

15. The Panel was convinced of the importance of not allowing such oversights or errors to remain unremarked and uncorrected. If they were, the UN's reputation as an employer and its ability to recruit and hold qualified staff would eventually be affected.

16. The Panel had no information regarding any out of pocket expenses to Appellant during the two-month hiatus. Nor did it have any basis to calculate in money terms the extent of the damage to him. Any compensation made to him would have to be considered as comprehensive with respect to the above, and symbolic in nature.

Recommendations

17. The Panel recommends that the Secretary-General request ESCWA to extend an official apology to Appellant for the inconvenience caused to him.

18. It recommends that Appellant be given a good faith compensation in the sum of $1,000.00."

On 5 August 1994, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has examined your case in the light of the Board's report, and has decided to accept its recommendation that you be given compensation in the sum of

$1,000.00 and that you be extended an official apology by ESCWA for the inconvenience caused to you."

On 22 September 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Following the Applicant's re-entry into service, a series of repressive tactics, creating unbearable conditions for the Applicant, were used to prevent him from resuming his regular work duties.

2. Termination of the Applicant's appointment was based on biased judgement, representing unfair and discriminatory treatment. Had the normal criteria for extending the services of regional advisors been used, the Applicant's services would have been extended.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legal expectancy to renewal of his fixed-term appointment.

2. The decision not to renew the Applicant's appointment was not vitiated by improper motives.

3. The Applicant has been granted adequate compensation for inconveniences caused by the subsequently rescinded decision not to renew his contract beyond 30 June 1993.

The Tribunal, having deliberated from 6 to 21 November 1995, now pronounces the following judgement:

I. On 3 February 1992, the Applicant, an Egyptian national, was given a one year fixed-term project personnel appointment as Senior Regional Adviser on Environment, ESCWA, at the L-5 level. On

16 November 1992, he was granted an extension of his appointment through 31 December 1993, but the administrative formalities required to implement the appointment were apparently not completed.

II. In 1993, a new Executive Director was appointed at ESCWA. On 24 May 1993, he informed the Applicant that his appointment would be maintained on a monthly basis, through 30 June 1993. On 29 June 1993, a further one-month extension was granted to the Applicant in order to enable him to undertake a mission to Lebanon. On 30 June 1993, the Applicant refused the proposed extension, claiming that it was inconsistent with his contractual status with ESCWA through 31 December 1993, the officially approved expiration date of his extension.

III. On 5 July 1993, the Applicant requested administrative review of the decision to terminate his employment with effect from 30 June 1993. In the interim, he returned to Egypt. On 28 July 1993, a Review Committee recommended that the Applicant's contract be extended until 31 December 1993. This decision was accepted by the Executive Secretary of ESCWA. Thereafter, the Applicant was informed of this decision and was asked to report for duty.

IV. On 20 September 1993, the Applicant lodged his appeal with the Joint Appeals Board (JAB) claiming compensation for moral and professional damage caused by ESCWA's decision to terminate his appointment on 30 June 1993. The JAB recommended that the Applicant be compensated in the amount of $1,000.00 and that ESCWA extend an official apology for the inconvenience caused to him.

V. On 5 August 1994, the Applicant was informed that the Secretary-General had accepted the JAB's recommendation. However, on 22 September 1994, the Applicant appealed this decision to the Tribunal. The Applicant argues that in terminating his appointment

in June and again in December 1993, ESCWA failed to observe United Nations Rules and Regulations. In addition, he claims that the decision not to renew his appointment was biased, constituting unfair and discriminatory treatment.

VI. The Tribunal finds that the issue in this case is whether the Applicant's rights were violated when his fixed-term appointment was not renewed by ESCWA. The Applicant's one year fixed-term project personnel appointment was governed by the 200 Series of the United Nations Staff Rules. Specifically staff rule 204.3(d) provides, inter alia, that "A temporary appointment does not carry any expectancy of renewal."

In addition, all of the Applicant's subsequent Letters of Appointment contained an express provision that the appointments carried no expectancy of renewal or of conversion to any other type of appointment.

VII. The Tribunal's jurisprudence regarding the issue of a legal expectancy of renewal is that, absent exceptional circumstances, not present here, employment with the Organization ceases on the expiration date of a fixed-term contract; even an efficient or outstanding performance does not create a legal expectancy of renewal. (Cf. Judgements No. 173, Papaleontiou (1973); No. 205, El-Naggar (1975); No. 427, Raj (1988); and No. 440, Shankar (1989)). Hence, the Applicant had no legal expectancy of renewal of his appointment beyond 31 December 1993.

VIII. The claims relating to the Applicant's termination in June 1993 are now moot, as the termination was rescinded and his appointment was extended until 31 December 1993. The Organization has admitted that the decision not to extend the appointment beyond June 1993 caused the Applicant some inconvenience. The Tribunal

finds that the Applicant was reasonably compensated for it by the JAB recommendation to pay him a sum of $1,000.00, accepted by the Secretary-General.

IX. The Applicant also claims that his contract was not renewed due to improper motives on the part of the Organization. The burden of proving improper motives is upon the Applicant. The JAB determined that ESCWA's decision not to renew the Applicant's contract was not improperly motivated. Furthermore, the Tribunal finds no convincing evidence of improper motives. (Cf. Judgements No. 312, Roberts (1983); and No. 428, Kumar (1988)). Thus, the Tribunal concludes that the Applicant has failed to discharge the burden of proving the allegations of improper motives.

X. Based on the foregoing, the Tribunal concludes that the decision not to renew the Applicant's fixed-term project personnel appointment did not violate his rights. Accordingly, all the Applicant's pleas are rejected.

(Signatures)

Jerome ACKERMAN
President

Leliel Mikuin BALANDA
Member

Mayer GABAY
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary